

SERVICE DATE - LATE RELEASE DECEMBER 6, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34213

PUGET SOUND & PACIFIC RAILROAD—  
LEASE AND OPERATION EXEMPTION—UNION PACIFIC RAILROAD COMPANY

[REQUEST FOR WAIVER OF 49 CFR 1150.42(e)]

Decided: December 6, 2002

By request filed on November 12, 2002, Puget Sound & Pacific Railroad (PSPR) seeks a waiver of the requirements of 49 CFR 1150.42(e)<sup>1</sup> to permit the exemption it is seeking in this proceeding to become effective without awaiting the expiration of the 60-day notice period, measured from the date of certification to the Board, specified in section 1150.42(e). The waiver request will be granted.

On November 14, 2002, PSPR, a Class III rail carrier, filed a verified notice of exemption (verified notice) under 49 CFR 1150.41 to lease and operate approximately 1.85 miles of rail line from Union Pacific Railroad Company (UP). The line extends between milepost 2.41 at Blakeslee Junction, WA, and milepost 4.26 at Raisch, WA. According to the verified notice, PSPR intended to consummate the transaction on December 1, 2002.

PSPR states that, on October 2, 2002, as required by 49 CFR 1150.42(e), it posted notice of its intent to undertake the proposed transaction at the workplace of the employees on the rail line and served a copy of the notice of intent on the national offices of the labor unions representing the employees on the line. Because of an internal communication problem, however, PSPR states that it failed to certify to the Board that it had complied with the requirements of 49 CFR 1150.42(e) until November 8, 2002. Consequently, in order to consummate the transaction on the intended

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<sup>1</sup> “If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier’s projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant’s intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.”

consummation date, or as soon thereafter as possible, PSPR seeks waiver of 49 CFR 1150.42(e) insofar as it relates to certifying to the Board that it has complied with the requirements at least 60 days prior to closing.

PSPR states that the line involved in this proceeding generates approximately \$50,000 per year in revenue,<sup>2</sup> and that the notice of intent offers no new jobs on PSPR. Moreover, the notice of intent states that “it is not anticipated that there will be any effect on UP employees.” Thus, PSPR submits that affected employees and their labor unions have had the full 60 days’ notice required by the regulations, and that no interested party, including employees and their unions, would be adversely affected by waiving the 60-day certification rule to allow it to implement the transaction on or after (1) the date of service of a decision granting the waiver request or (2) December 1, 2002, whichever is later.

## DISCUSSION AND CONCLUSIONS

PSPR’s waiver request is reasonable and will be granted. The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected (especially through job loss) by the transfer of a line are given sufficient notice of the transaction before consummation.<sup>3</sup> The responsibility to provide the general notice rested on PSPR. We take seriously the requirements of the rule and caution PSPR to comply fully with those requirements in the future. Here, however, the record does show that notice was provided to employees working on the rail line and on the national offices of the labor unions representing those employees on October 2, 2002, 60 days prior to the intended consummation date. Thus, under the circumstances, granting the requested waiver would not be inconsistent with the objectives in adopting the 60-day notice requirement. Accordingly, with respect to this transaction, we will waive the remainder of the 60-day requirement, as measured from the certification date to the Board. As a result, the exemption in this proceeding will become effective on the date of service of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>2</sup> Although the lease is projected to add only \$50,000 to PSPR’s annual revenues, PSPR anticipates that its gross revenues as a result of this transaction would slightly exceed \$5 million in 2002.

<sup>3</sup> See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice, 2 S.T.B. 592 (1997).

It is ordered:

1. PSPR's waiver request is granted.
2. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams  
Secretary